



TEXAS CENTER  
FOR THE JUDICIARY

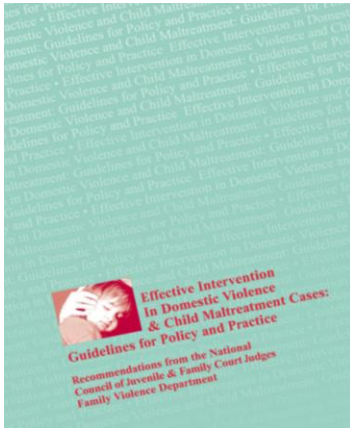
2016 Child Welfare Conference  
November 14-16  
Austin Sheraton Hotel

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## Today's Docket

- Goal: Improve judicial management of cases to reduce domestic violence against women and enhance child welfare.
- Review Recommendations of the SB 434 Task Force to Address the Relationship Between Domestic Violence and Child Abuse and Neglect.
- Learn about New-But-Not-Yet-Implemented DFPS Disposition Guidelines for CPS Investigations of Domestic Violence.

# Domestic Violence & Child Welfare



*"Domestic violence advocates are zealots who never believe that the mother could have done anything wrong!"*

*"Child welfare agencies snatch children without good reason and blame mothers when they are really the victims!"*

*"Judges are ignorant of both the dynamics of abuse of battered mothers and the challenges child protection works face in doing their jobs."*



## SB 434 Task Force Guided by Greenbook

TASK FORCE TO ADDRESS THE  
RELATIONSHIP BETWEEN  
DOMESTIC VIOLENCE AND CHILD  
ABUSE AND NEGLECT REPORT



Submitted in accordance with  
S.B. 434, 82<sup>nd</sup> Texas Legislature, 2011

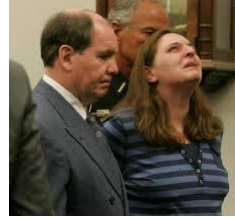
September 1, 2012  
Texas Health and Human Services Commission

SB 434 Task Force:

Domestic violence is a pattern of behavior that is used to gain or maintain power and control over a current or former intimate partner. It can include physical, sexual, emotional, economic or psychological actions or threats of actions that influence another person. Domestic violence can happen to anyone of any race, age, sexual orientation, religion, gender, socioeconomic background or education level. It can happen to couples, both adults and minors, who are married, separated, divorced, living together or who are dating.



## DV Fallacy No. 1: Calm Father versus Hysterical Mother



*"This lady is crazy!"*

- As a victim of domestic violence, the mother may be suffering from depression or PTSD. She may also be responding out of fear of losing custody and danger to her children.
- In neither the short run or the long run are the children better off with the perpetrator.

## DV Fallacy No. 2: Alcohol Fueled

*"If he can just stop drinking, he'll be a sweetheart."*

While alcohol may be part of the problem, and substance abuse treatment may be required, seldom will addressing the substance abuse problem be the only needed intervention.



## DV Fallacy No. 3: Mutual Combat

*"This is just a case of mutual combat. These are birds of a feather."*

- Don't confuse self-defense with mutual combat.
- Don't confuse reactions triggered by PTSD with mutual combat.
- Carefully consider the history of the mother and father to sort out the family dynamics—assessing for coercive control.



## Recommendation for Judges: Training of Counsel about Domestic Violence

- Leadership opportunity for judge to strengthen system.
- Incorporate into CPS ad litem training.
- Develop training for general family lawyers.

## Recommendation for Judges: Early Appointment of Counsel

- Why not?
  - Save county money in the short run.
- Why?
  - Helps the woman break from the man.
- New Law: SB 1931 from 2015 amends Texas Family Code § 107.013:
  - At parent's first appearance in court, the court must inform parent of right to lawyer and if indigent to a court-appointed lawyer.
  - Law now authorizes discretionary appointment of a temporary attorney ad litem for a parent beginning with TRO or Attachment and ending with determination of indigence before full adversary hearing.



## Recommendation for Judges: Separate Appointment of Counsel for Mother and Father

- Why do we make joint appointments?
  - Requested by parents.
  - Saves county money in the short run.
- What's the problem with joint appointments?
  - Allows the man to continue to control the woman.
  - Increases overall cost to taxpayers in the long run.
- New Law: SB 1931 from 2015 amends Texas Family Code § 107.013: If both parents of the child are entitled to the appointment of an attorney ad litem under this section and the court finds that the interests of the parents are not in conflict and that there is no history or pattern of past or present family violence by one parent directed against the other parent, a spouse, or a child of the parties, the court may appoint an attorney ad litem to represent the interests of both parents.



## Going Further: Require Mother's Lawyer to Do the Job and Pay the Lawyer

- Lawyers for mothers should seek needed protective orders, paternity orders, possession orders, child support orders, and divorces within the CPS case.
- These steps are not beyond the scope of the appointment:
  - Texas Family Code § 107.0131(1)(D) provides that the attorney ad litem for the parent “shall take any action consistent with the parent’s interests that the attorney ad litem considers necessary to expedite the proceedings.”
- Taking these necessary steps help children and save money in the long run.



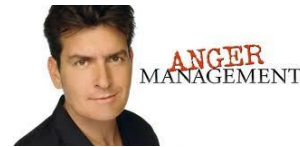
## Recommendation for Judges: Mandate that the Perpetrator Complete Batterer's Intervention and Prevention Program (BIPP)

- Gold Standard for Perpetrator Treatment
  - Used primarily in criminal cases
- Why not used more in civil cases?
  - Limited capacity
    - Not Medicaid Reimbursable Vendor
  - Limited Perpetrator Engagement
    - Order participation?
    - Order payment of cost?
  - Program takes minimum of six months



## Going Further: Engaging the Father

- Hold the father accountable. Don't let him just walk away.
  - For the sake of his ongoing relationship with the children.
  - For the sake of his future relationships with other women and children.
- Mandate appropriate treatment:
  - No readily available diagnostic instruments to determine treatment.
  - No credentialing of professionals trained to treat domestic violence.
  - Questionable effectiveness of treatment, e.g., anger management.
- Be thoughtful about visitation:
  - Is it safe?
  - Will it benefit the children?
  - Should it be restricted or supervised?



## Recommendation for Judges: Be Careful about Power Dynamics When Using Mediation

- History of DV may inform whether you mediate.
  - Divorce - Texas Family Code § 6.602(d)
  - SAPCR - Texas Family Code § 153.0071(f)
- History of DV may inform how you mediate, e.g., use caucus only.
  - Divorce - Texas Family Code § 6.602(d)
  - SAPCR - Texas Family Code § 153.0071(f)
- Mediators and lawyers need training in domestic violence.

## Recommendation for Judges: Don't Merely Dismiss Cases

- Don't merely dismiss cases to default to existing order or no order.
- Instead, leave the parties with a final order that resolves all issues affecting the parent-child relationship.



## Other Relevant Recommendations: Terminate Parental Rights of One Parent

Why not terminate?

- Until 2007, regulations prohibited DFPS seeking to terminate one parent.
  - Not now. CPS Handbook, Ch. 6233 (2009).
- Until 2005, mom lost right to child support.
  - Not now. Texas Family code § 154.001(a-1).
- If plan is not adoption, no point.
- May require trial if dad won't deal.

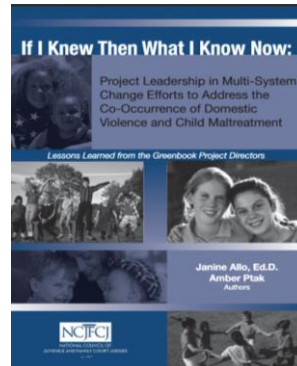
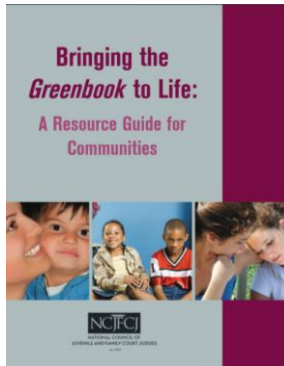
Why terminate?

- Continued litigation is a means for man to exert continued control.
- Continued relationship may not be safe for woman or children.





## Other Relevant Recommendations: Expand Community Collaborations



## New DFPS Disposition Guidelines for DV Investigations

- Emerged from SB 434 Task Force
- Not yet implemented
- December 3, 2015, Most Recent
- DFPS training underway



Disposition Guidelines for  
Domestic Violence  
Resource Guide

## Guidelines Try to Resolve Differing Perspectives on the “Failure to Protect”

- Differing Perspectives:
  - Mother lacks ability to protect and therefore can't be held accountable
  - Ability doesn't matter—the reality is we must protect child
- Legal Theory:
  - Removal under § 262.201—danger to the physical health or safety of the child caused by a . . . failure to act.
  - Termination under § 161.001(d)—knowingly allowed the child to remain in surroundings which endanger the physical or emotional well-being of the child.



## Why Don't She Just Leave?

- No where to go—food, clothing, and shelter for her and children
- Fear of being hurt or killed or of children being hurt or killed
  - Leaving or taking steps to leave is linked to increase lethality
  - Last year 43 of women killed had left
- Fear of losing custody of the children or of unrestricted access
- Learned Helplessness—trauma paralyzes woman into staying because she thinks she has no control
- Active Mastery—to cope with trauma a woman stays in effort to try to regain control

## Moving from Judgment and Condemnation to Diagnosis and Treatment

- Turn the question “Why Doesn’t She Just Leave?” from a judgmental inquiry into a diagnostic inquiry.
- Then address the issue:
  - Economic—transitional housing and employment services
  - Fear—protective orders and safe housing
  - Children—SMC and TPR or Restricted/Supervised Visitation
  - Trauma—counseling and other supportive services
- Even with your best efforts, some mothers—for whatever reason—will continue a relationship with the father.



## Excerpts from Core Concept:

- Do not hold the victim of domestic violence accountable for abuse and neglect of a child solely based on the individual being a victim of domestic violence. If a child is at risk of harm due solely to the violence committed against the adult victim, hold the adult victim accountable only for failing to remove the child from that risk of harm, and only after considering the totality of circumstances.
- It is key that CPS assess the ability of the adult victim to take protective action given the possibility the violence may escalate if the adult victim takes action.
- It is key that CPS accurately assess the protective actions exhibited by the parent who is a victim of domestic violence.
- A child should remain in the care of an adult victim of domestic violence who demonstrates sufficient protective actions to keep the child safe, consistent with the safety and best interest of the child. If the caseworker determines that a child is not safe despite the efforts made by an adult victim of domestic violence, the caseworker should consider alternative placement.
- Enhancing the safety of the parent who is a victim of domestic violence enhances the child’s safety.

